IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.84 OF 2006

Dhanaji G. Jadhav & Ors. ...Petitioners

Versus

Sudarshan V. Thopate & Ors. ...Respondents

Shri R.V.More for the Petitioners.
Shri S.S.Patwardhan for Respondent No.1.

CORAM : S.C. DHARMADHIKARI, J.
DATE : JANUARY 16, 2006.

P.C.:

1. Rule. Returnable forthwith by consent.

2. Heard Shri More learned Counsel appearing for the petitioners and Shri Patwardhan learned Counsel appearing for the contesting respondent No.1. Shri More states that rest of the respondents need not be heard for the purpose of the present petition.

3 . This petition under Article 227 of the Constitution of India challenges an order passed by the Joint Civil Judge, Junior Division, Pandharpur on 19th November, 2005 below Exh.34 in Election Petition No.1 of 2005. It is not in dispute that Election Petition No.1 of 2005 is filed by the first-respondent under Section 15 of the Bombay Village Panchayat Act,

1958 challenging the election to Takali Grampanchyat, and more particularly Ward No.3 wherefrom the first-respondent contested, but, lost the elections. In the Election Petition, it is pointed out that the Returning Officer committed an obvious error in declaring the candidate, namely, Kadir Abdul Rouf Shaik (respondent No.13), as elected. It is the case of the first-respondent that the said candidate has received 318 votes and the figure 418 is an obvious error. On the other hand, the first-respondent should have been declared elected as he received 402 votes from the said Ward.

4. The said Election Petition is filed on 4th November, 2005. The election results were declared on 25th October, 2005. In the said Election Petition, an application for injunction (Exh.5) was preferred by the first-respondent, wherein he prayed that till the hearing and final disposal of the Election Petition the elections to the post of Sarpanch of the said Grampanchyat be stayed and necessary directions and orders be issued in that behalf to the election machinery.

5. It appears that temporary injunction was issued by the Joint Civil Judge, Junior Division, Pandharpur on 4th November, 2005 and the elections to

this post have been stayed.

6. The temporary injunction having been continued, it appears that the petitioners who are original defendant Nos.6,7,9 and 25 to 27 preferred an application to vacate the order of temporary injunction in the interest of justice as according to them once the Grampanchyat has been duly constituted in law, there is mandate to hold the first meeting and thereafter to elect Sarpanch and Up-Sarpanch of the same. That mandate flows from the statute and merely because election of one of the Wards has been challenged and Election Petition is pending, the Court below could not have restrained the Authorities from exercising their powers under the statute as also discharging their obligations thereunder.

7. It appears that the first-respondent filed his say to the application and contested the locus of the petitioners to move the same. In his submission, the order of injunction does not reach and/or being not directed against these defendants, they cannot apply for vacating the same. Accepting this objection of the first-respondent, the application has been rejected and now the temporary injunction application is placed for hearing and final disposal. In fact, the order impugned in this petition proceeds to direct

that an application for injunction also cannot be contested by the petitioners and they have to file their Written Statement to the main petition.

8. It is this order which firstly refuses to vacate the injunction and secondly accepts the plea of locus of the petitioners, which is under challenge in this Petition under Article 227 of the Constitution of India.

9. Shri More learned Counsel appearing for the petitioners invites my attention to the provisions of the Bombay Village Panchyats Act, 1958 and more particularly Sections 10, 28 & 30. He invites my attention to Section 30(2) which mandates that election of the Sarpanch shall be held in the first meeting held after every general election. He submits that, similar is the position with regard to the post of Up-Sarpanch.

10. Shri Patwardhan learned Counsel appearing for the contesting first-respondent supports the order of the learned Judge. In any event he contends that the Election Petition is being heard and the evidence is being recorded therein. He submits that appropriate orders be passed considering the nature of the pleas raised in the Election Petition.

11. In my view, the Court below was in obvious error in granting an injunction to restrain the authorities from holding elections to the post of Sarpanch of the Grampanchyat in question. It is not the case of the petitioners that the said elections cannot be held because the Election Petition is pending. In fact, the election petitioner has not pointed-out any such provision by which it could be said that during pendency of an Election Petition challenging the election of a member to the Grampanchyat from some Ward, the election of Sarpanch cannot be held. In fact, there is no provision which is pointed out restraining the Grampanchyat itself to be convened after the elections are complete. Once there is obligation in law to convene the meeting of Panchayat and thereat elect Sarpanch, then the Court below could not have restrained the authorities from discharging their functions and fulfilling their duties in law. The temporary injunction as granted has the effect of indefinitely suspending the election to the post of Sarpanch which is not in issue before the Court, in the Election Petition. The other error committed by the learned Judge that the injunction order cannot be vacated at the instance of the petitioners, is also apparent and that view could not

have been taken in the facts of this Case. It is an injunction which is running against the Panchyat and the statutory authorities; and persons who have been impleaded as parties and interested in the affairs of the Panchyat can always come and point-out to the Court that the injunction order which is contrary to law must be vacated forthwith. The locus of the petitioners, therefore, to move an application under Order XXXIX Rule 4 of the Code of Civil Procedure, therefore, should not have been questioned.

12. Having noticed the statutory mandate and the obvious error committed by the Court below, the only course open for me is to correct the same in my jurisdiction under Article 227 of the Constitution of India. More so, when I find that this Court's intervention is necessary in public interest and to prevent the Grampanchyat from functioning without a duly elected Sarpanch. The constitutional and statutory mandate having been noticed, this Court must necessarily interfere and set right the apparent error on the face of the record.

13. In the light of the above, petition succeeds. Order granting temporary injunction restraining holding of the election to the post of Sarpanch stands vacated forthwith. All consequential orders also

stand set-aside. It would be open for the Authorities to proceed to hold the elections to the post of Sarpanch in accordance with law. Considering that the Election Petition is already proceeding and the first-respondent is prejudiced by its continuing to remain pending, the Trial Court would be well advised to expedite the hearing of the same and endeavour to dispose it of on merits and in accordance with law within a period of three months from today.

(S.C.DHARMADHIKARI,J.)